

## SUBSTANDARD LIVING CONDITIONS SPECIAL COMMITTEE

MAY 26, 2016

A meeting of the Substandard Living Conditions Special Committee was held on Thursday, May 26, 2016, at 7:00 p.m. in the Aldermanic Chamber.

Alderman Ken Siegel, Chair, presided.

Members of Committee present: Alderman Don LeBrun, Vice Chair  
Alderman-at-Large Mark S. Cookson (via telephone)  
Alderman-at-Large Michael B. O'Brien, Sr.

Members not in Attendance: Alderman-at-Large Lori Wilshire

Also in Attendance: Alderman Benjamin M. Clemons  
Alderman Tom Lopez  
Alderman Sean M. McGuinness

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### PUBLIC COMMENT

Mr. Stacy Lawton, 243 Main Street

I wanted to comment on tenants concerns about living conditions in the city.

Chairman Siegel

Just so you know the initial public comment phase is for legislation to be debated before the committee. The second public comment is open for general public comment.

Mr. Lawton

Can you switch me to that?

Chairman Siegel

That would be fine, no problem.

Attorney Peter Nicosia

I am here on behalf of a group of property owners. My comments are more to set the stage for the second phase of the discussion relative to the legislation which is being considered tonight. My thought process leaving the last hearing was that we had a pretty productive discussion about some of the concerns of the property owners; at which some of which your inspectional department seemed to be receptive of and certain Aldermen as well. My understanding is that the only by-law amendment that is before us tonight is the reinsertion of the warning provision, albeit a discretionary one. My expectation was that there was going to be a much more comprehensive overhaul of what the current proposed amendment was going to be addressing a number of property owners concerns. I want to highlight three of those. Number one, we are certainly looking for a warning provision to be put back into this proposed by-law amendment but we are looking for it to be a mandatory warning system as opposed to a discretionary one. Number two, all of your inspectional employees in the city seem to be receptive to the idea of an administrative appeal process, albeit a short version. I don't see that as having been addressed. The property owners are also very concerned with the time period for compliance. Right now we have a 10-day provision that's in this working by-law and we were

hoping for something longer for non-life safety types of issues, maybe upwards of 30 days. The hopes would be coming out of this second public hearing on this issue would be to maybe form a smaller group whether the lawyers are involved or certain members of this committee as well as property owners to sort of cooperatively try to work through a more mutually acceptable rewrite of the proposed by-law as opposed to what is being presented here this evening. I am not going to regurgitate all of the arguments that I made at the last hearing, those are in print and were all discussed and it's part of the administrative record before you but those three items that I just raised are significant issues. The message, at least as received by my clients seems to be, and this is an appearance at this point, that the committee listened to all of the, what I consider to be reasonable, constructive comments of the existing draft and none of those have been acknowledged or addressed in this re-write. It seems to me that we have just been re-presented with the same by-law only with a discretionary warning provision which really doesn't afford any protections for arbitrary and capricious use of it. We are hoping that as a result of tonight's discussions that the committee is going to go back to work on this and we are looking to work cooperatively with you to try to work through all of the issues that were addressed previously. Thank you.

Mr. Bob Dionne, 447 Main Dunstable Road

I just wanted to add one other point to the attorney and that is some of the vagueness of the penalty; it goes back to all of the original codes in the housing code, the blue book and some of those are not super critical. For example, damaged siding; to put somebody through the ringer for a scratch or a crack in the damaged siding and I don't think anyone intends to do that but it's still in the books as it's currently written. I thought also we could work through what items should be in there. Obviously there are some critical things and someone should be penalized severely if they don't take care of a life safety issue but some of the things in the code are loose and vague and I think we could bring them together a little bit more definitively to make sure we emphasize the important things. I think the city should be coming down hard on someone who doesn't comply but to come down hard on something that's really a minor issue is questionable.

#### COMMUNICATIONS

From: Celia K. Leonard, Associate Corporation Counsel

Re: O-16-003, Administrative Enforcement – Proposed 2<sup>nd</sup> Amendment

**MOTION BY ALDERMAN O'BRIEN TO ACCEPT AND PLACE ON FILE**  
**MOTION CARRIED**

UNFINISHED BUSINESS– None

NEW BUSINESS – None

TABLED IN COMMITTEE

**MOTION BY ALDERMAN O'BRIEN TO TAKE FROM THE TABLE AMENDED O-16-003**  
**MOTION CARRIED**

#### **O-16-003, Amended**

Endorsers: Mayor Jim Donchess  
Alderman Ken Siegel  
Alderman Don LeBrun

#### **ADMINISTRATIVE ENFORCEMENT OF ORDINANCES**

- Personnel/Administrative Affairs Committee Recommends: Final Passage as Amended
- Amended & Referred to Substandard Living Conditions Special Committee – 3/22/16
- Tabled 4/14/16

**MOTION BY ALDERMAN O'BRIEN TO AMEND O-16-003 BY REPLACING IT IN ITS ENTIRETY WITH THE PROPOSED AMENDMENT ATTACHED TO ATTORNEY LEONARD'S MEMO ACCEPTED EARLIER THIS EVENING**

ON THE QUESTION

Should we do the vote by roll call since Alderman Cookson is participating via telephone?

Chairman Siegel

That is correct, I apologize. We have to go back to the communication. Given that is the case is there any debate on that that has arisen since the mistake in a non-roll call vote? Seeing none I will ask the Clerk to call the roll.

*A Viva Voce Roll Call was taken, which resulted as follows:*

Yea: Alderman Cookson, Alderman O'Brien, Alderman Siegel 3

Nay: Alderman LeBrun 1

**MOTION CARRIED**

Chairman Siegel

That communication from Celia Leonard which is the communication associated with the second amended version of this legislation is accepted before the committee.

There was a motion to remove the amended version of O-16-003 from the table and that motion should be taken by roll call. Can the Clerk please call the roll?

*A Viva Voce Roll Call was taken, which resulted as follows:*

Yea: Alderman Cookson, Alderman O'Brien, Alderman Siegel 3

Nay: Alderman LeBrun 1

**MOTION CARRIED**

Chairman Siegel

There was a further vote to amend O-16-003 by replacing it in its entirety with the proposed amendment attached to Attorney Leonard's memo which was accepted earlier this evening. That again was the second amendment that was provided with the agenda this evening and if there is no further comment would the Clerk please call the roll?

*A Viva Voce Roll Call was taken, which resulted as follows:*

Yea: Alderman LeBrun, Alderman Cookson, Alderman O'Brien,  
Alderman Siegel 4

Nay: 0

**MOTION CARRIED**

Chairman Siegel

I would like to proceed as we did at the previous meeting. I'd like the city staff that is currently in the audience to come forward and join us in the horseshoe. Also, if it's acceptable to the public I know that Attorney Nicosia is here representing the tenant interests and I suspect you would all be in approval if he joined us as before in the horseshoe.

**MOTION BY ALDERMAN O'BRIEN TO RECOMMEND FINAL PASSAGE OF O-16-003 AS AMENDED**

ON THE QUESTION

Alderman Clemons

Perhaps it might be good if one of the employees went through the changes from the last time we spoke to what is on the table for final passage tonight.

Chairman Siegel

I think that is an excellent idea.

Before we get started on that, Attorney Nicosia; I know that you said it looked like we were just making this one change and that's all we are voting on. The way the committee works is that this is sort of the base level next step. We are going to discuss that and the committee is certainly open to any additional changes depending on how the discussion goes on and so we are not precluded from making additional changes just so you know.

Ms. Sarah Marchant, Community Development Division Director

It is essentially not removing the warning section that was previously removed by this language and keeping that in the housing ordinance only. We did some basic re-numbering and we went back and talked about the request for an administrative appeal process. The appeal process is through the court, the whole point of this ordinance is to give us a step before going to court to deal with situations and get them more exponentially expedited and more efficiently handled. This is not an ordinance that has any intention to be used in any other way and it is a tool in the tool box; one of hopefully several that we have to get our job done. At this point we don't feel the administrative appeal process is necessary as it's through the court system and it is not something that we are willing to move forward with at this time and so we put the warning back in. There was significant discussion about putting in a written warning requirement in here and that is also not something that staff supports at all; there are a huge variety of ordinances and regulations that are included in here, we have a process that we do every day that has worked for years and years and that process requires a lot of leeway and grey area and our staff regularly makes great decisions about this and handle it with a ton of discretion as you have heard from all of the landlords and residents who have spoken. At this point in time we feel like this is the most effective tool for staff to use in enforcing this ordinance and moving forward with faster compliance.

Chairman Siegel

Is there anyone else that would like to comment?

Attorney Nicosia

Obviously I wasn't a party to any of the interdepartmental discussions so I don't know what the discussion points were or what the debate or analysis was. The only comparative analysis that I can undertake is the position that the inspectional people took when they were in this room at the last hearing and the one that they

are taking now which are diametrically opposed in my view. Focusing first on this notion that a court appeal is an available mechanism and that is sufficient. The mind set here from the committee in enacting this type of legislation is precisely to try to avoid a court system appeal by virtue of the fine system because you find the court system to be too lengthy in duration, too costly for the city and you are hoping that this fine structure is going to short circuit those processes but that's a double edged sword taking that position here because you are basically forcing unit owners that are aggrieved with their only due process mechanism to immediately move the matter into court; the very situation that you are trying to avoid. An administrative appeal process can be quick, internal and that type of appeal process is more cost effective and it also affords due process to these property owners. I raised several issues in my memo that dealt with the due process issue ranging from most significantly identifying who ultimately is the responsible party in circumstances surrounding what the code violation is because you well know that there will be different circumstances for these property owners that are faced with a potential fine situation that may justify different actions under different circumstances and if you go forward with the way the ordinance is written right now it completely deprives an aggrieved property owner of due process before the imposition of a fine penalty and the only option that they have is to go to court which is what you were trying to avoid by virtue of this ordinance. Other communities have done that and I think it's workable with a cooperative process with the city's counsel, myself, maybe a designated representative from inspectional, a designated representative from this committee and maybe a designated property owner. I think we could go back and forth and come up with a rewrite in fairly short order to include an administrative appeal process that would be palatable for everyone. I respect, as do all of the property owners, the faces that are in this room right now. From what I have heard, you are held in high regard by the property owners in this city. The problem is if you leave the current by-law in its current state affording exclusive discretion to any inspectional authority to warn or maybe not warn; we are worried about people that are not in this room but years down the road; maybe there will be personality clashes and different issues, if there is a mandatory provision to the warning system, even if it is a short leash and a short time period and short offense in merit that at least provides certainty and reasonable expectations for property owners. The way it is now it's a coin toss as to whether they have a reasonable inspector or not. The time period is still a problem. You still have it with these 10 day type turn-a-rounds. There has to be a sliding scale here. Life safety is completely different than some minor esthetic issue that has no impact. You leave the door wide open for disgruntled tenants to use this type of vague ordinance as an arrow in their quiver for retaliatory measures against the landlord that they are upset with or don't want to pay. Basically they can self-create the issue and the landlord is immediately strictly liable under a fine system with no due process and no appeal mechanism other than court and that is of great concern to the property owners as well. There are language problems in this ordinance and I pointed those out in my past memo. Once again, all of these things that I am addressing, with a microcosm of what this environment is we could work through the things and redraft an ordinance that balances everyone's concerns. That's what we would like to do. We have come here focused on significant issues with a willingness to try to work through those issues. The response that may have gotten is a turn down of every single thing that the property owners have raised. You haven't given them anything in terms of their concerns that were raised at the last hearing, nothing. You put in the window dressing warning provision but it's discretionary, beyond that it's the same ordinance. My expectation, after the last hearing, because the inspectional department, in the initial comments, seemed pretty receptive to at least some of the things that I was saying. I thought I was going to see some form of a comprehensive re-write, be invited to partake in that re-write or comment on it where there could be a coronation in front of you rather than a further investigation as to what is to befall these property owners and that is of concern to me. I understand that this committee and the Aldermen deal with a lot of issues here in the city and you are looking at things sometimes from 30,000 feet, this is the only issue which is on the hot seat for these property owners so they are extremely focused on it. I want to volunteer my willingness again to work with your counsel and this committee to try to achieve a proposed ordinance that addresses some of these concerns because what is before us right now addresses none of them. I don't mean to be flippant or combative but I am just stating the facts. We've raised significant reasonable issues that haven't been addressed and I see a diametrically opposed view and the reversal of comments that I saw from the inspectional department before; the very front line of who is going to be using this ordinance and that's of concern to me. I think our issues are legitimate and we would like to work through them. I'll leave it with that for now.

Alderman Clemons

When I received the proposed second amendment which is now what is on the floor for final passage I had the same concerns myself. I read the memo from Attorney Leonard and what I found striking was the fact that the warning was not required; but that it was rather an informal warning. I understand that is how the ordinance reads now and so we were leaving that language in there. However, the issue for me isn't so much that the warning now, the way that we do business now because there is no fine associated with that, it's either you fix it or we go to court. By adding the citation to me you need to have a mandatory warning in there. That was my first concern and my second concern was the fact that there was no administrative appeal process in the ordinance either. I worked with Attorney Leonard to come up with another amendment to this ordinance and through that discussion it became clear that an administrative appeal probably would not be something that the employees or the various departments could take on, at least not in a fair and across the board way. The only alternative would have been for the Housing Authority to take up an appeal and that would take 30 to 60 days depending on when the appeal came through and we don't want these things lingering on. So I dropped that and said well let's figure out a way that we can get a mandatory warning provision. I have left another communication on everyone's desk entitled "Proposed Third Amendment" from Attorney Leonard and the actual amendment itself is attached to that. I don't know if it's appropriate if I talk about that.

Chairman Siegel

It would have to be a communication that some member of the committee would have to...first of all, let me note for the record that Alderman Cookson has joined us at 7:21 p.m. In order for that to come before the committee a motion would have to be made by a committee member and be accepted.

Alderman Cookson

I know that Alderman Clemons has further amended the piece of legislation that we are contemplating this evening. I think that Attorney Nicosia has brought up some really good points and I just want to take this in an orderly manner and instead of introducing another communication I think we could probably just accept a motion at some point. I just want to make sure that we address the points that need to be addressed. I am not sure it's necessary to introduce another communication, we can discuss it as a committee and then if somebody is interested in making a motion to further amend what it is we are contemplating this evening that may be the avenue that we should take.

Alderman O'Brien

Point of order, by my calculations in clerking here there is a standing motion already for final passage. Therefore, we are complicating matters if we take an additional motion at this time.

Chairman Siegel

I want to point out that it would only be a motion to receive a communication regarding this. I see your point but we are not making a motion to amend or anything. I would concur with Alderman Cookson's philosophy and it was in fact mine. I really want take one thing at a time and modify if required based on comments received in committee and go from there. I wanted to avoid too many balls in the air. Right now there is the piece of legislation that existed, there are the proposed changes right now that we are discussing that we may accept without change or we may modify based on discussion of the committee which may or may not include any comments that Alderman Clemons or anyone else may make. I would prefer that we go that way and that was the communication that I made prior to the meeting regarding that, Alderman Clemons.

Alderman Clemons

That's fine but the only thing is I would like to be able to discuss some of these issues with making reference

to the third amendment as comparing it to this and some of the reasons why I might not support the amendment that is before us when it gets to the full Board of Aldermen. Is it appropriate for the purpose of the public to accept it and place it on file or I can just continue on because we all have it in front of us.

Chairman Siegel

What I would suggest and the way we typically handle things in committee is that the legislation comes before us and we have comments on it and we may ask for changes so I would say if you want to make changes or have comments, you contrast your notes on them with the existing documentation and suggest changes that way rather than have a communication which is a document which says this is what we should do because in a way it isn't quite fair. I've received communications from members of staff addressing this and I've told them specifically that I would not accept them and put them on the agenda because again, we are trying to start with a base level of understanding and we may not even accept what is before us. That's why I would urge that that's the way we should approach things.

Alderman Clemons

So knowing how we are going to proceed, to get back to my discussion with Attorney Leonard, I wanted to make sure that I wasn't mistaken in that a warning was not required in the proposal that is in front of us and she confirmed that was true. We worked on developing an alternative that has a warning mechanism and the reason for that is basically due process. In my opinion, the goal should be education when it comes to these types of issues. We are dealing with folks that may or may not understand that they have to do certain things and you want to give them a chance to correct it before you give them a ticket. I understand that the staff here this evening would never just go out and write a ticket but I worry about how things might change in the future, what if staff leaves? There is also an expectation that should be set and written into the ordinance that says there is a warning and this is your warning for the violation. My goal was not to make the process cumbersome, I received some complaints that a mandatory warning would add red tape and that it would be a cumbersome process which was basically the main concerns. Again, the language could be written that we don't have to prohibit; a warning could be vocal and I'll write it down that I warned you at 7:40 p.m. on May 26<sup>th</sup> and you'll be getting that citation in the mail so it doesn't have to be something that is prohibitive from someone doing their job and that's the way I see this. The other aspect to that and I know that Attorney Nicosia was worried a time period for compliance, I think that by adding a mandatory warning to this legislation would be a good idea because there would be nothing that would preclude multiple warnings from going out for the same issue. That would be at the discretion of the code enforcement officer who was issuing the warning. I think there is leeway there and there is discretion by adding a warning. All that said I can't support the amendment as it is before us right now and the reason being is that it doesn't have that warning. I have an alternative that I would like to propose if someone would like to bring it up, if not I will take it upon myself to propose it at the full Board of Aldermen.

Alderman Cookson

The proposed commentary, one of the things that I picked up on was something about education. I'm not sure the ordinances are intended to be educational but it caused me to think and I'd like to pose through you to any of our esteemed colleagues here this evening, employees of the City of Nashua, do the landlords understand or are they provided some guidance initially? When they identify themselves and say I want to be a landlord, when they become landlords do they understand their obligation and are they provided any guidance that says this is what you are responsible for as a landlord.

Mr. Nelson Ortega, Code Enforcement Manager, City of Nashua

Throughout my time here there have been several new landlords or individuals who do decide that they want to become landlords and they have come to City Hall and asked what they need to do. I do have an inspectional booklet that is available to all landlords. It's a list of everything that we look for when we go into a

building. We also provide what the state provides which are landlord/tenant laws. A landlord who really wants to know and wants to understand the rules do come to City Hall and seek out code enforcement. We also have the code enforcement officers that go to the community policing meetings and that's been going on for several years.

Alderman Cookson

So I am assuming that there may be some subset of landlords that don't come to City Hall or ask for guidance that would help them to abide by what our expectations are.

Mr. Ortega

That's correct.

Alderman Cookson

And eventually they turn up because code enforcement would...

Mr. Ortega

We show up on their doorstep.

Alderman Cookson

Then at that point I'm not sure how lengthy your record keeping system is but would you provide them at that point with guidance or information?

Mr. Ortega

Anytime we deal with a landlord that's new to us the first thing they will say is I didn't know that and we tell them and provide them with our housing code. They do get their warnings, we say take care of this and give us a call and one of the code enforcement officers will come out. That's when we start educating them and letting them know that this is a violation and there is a Code Enforcement Department and you can call us just like your tenants can call us.

Alderman Cookson

At that point, once you leave that particular property, any violations that are identified or...

Mr. Ortega

It's a permanent record in our system.

Alderman Cookson

And eventually it makes it into our assessment office, GIS as well, is that correct?

Mr. Ortega

Anyone who wants to know has to come to code. We are the record keepers for housing code violations.

Alderman Cookson

I just want to conclude and I appreciate the information. I think there are opportunities to expand that. To Alderman Clemons point, I think it is important that we have it documented in such a way that everyone knows what the expectation is of the city of the landlord obligations. I will conclude by saying that I would be interested in seeing the pamphlet of materials that you have available.

Chairman Siegel

I had provided the code book to all of the members of the committee and that is something the public is welcome to have. Director Marchant, is that something that is available on-line?

Ms. Marchant

Yes.

Chairman Siegel

None of the things that are in the legislation are new in the sense of what the violations are or how we would handle it typically, it's just the enforcement provisions that are different.

Alderman O'Brien

I did hear somewhat of an underlying current in this discussion, although Attorney Nicosia did say that many of the landlords do feel that we have a very good staff, but I understand there are going to be times that there is conflict with different people and I think the city already does have situations where that does occur. I see we have a member of the Fire Marshall Division and if there were something that came up within the Fire Marshall and something could be brought up to the chief of the department so what is the procedure in our city if something did come up and there is a personnel conflict within the performance of their duty, is there a mediation for these people?

Ms. Marchant

Absolutely, if there are miscommunications, anything that comes to my attention and a lot of times it doesn't even get to me because these managers interact constantly with their staff and people will go directly to the managers and say I feel like this didn't work out right today and they can talk directly to any of the managers at any time and if they don't feel satisfied they will certainly come to me and we work it out. I have yet to see something that hasn't been worked out in a way. It doesn't happen often but we do take care of it. I'd like to add that we document each step of the process with a discussion with the landlords or a warning with a written timeframe where they have to fix things.

Alderman O'Brien

I would feel comfortable then if there were to be any frivolous warnings, everything would be based on fact and as point of law within the scope and ability of their professional training and their duly authorized positions, is that correct?

Ms. Marchant

Correct.

Alderman O'Brien

If there was a violation, that's why the court mediates as such?

Ms. Marchant

Correct and we would know that we would have a due process binding as part of that court proceeding that we better be able to back up.

Attorney Nicosia

With all due respect to all of the comments, basically the joint response from Alderman O'Brien and Ms. Marchant is that property owners should have no worries because we are good people and we have a good track record of dealing with you and we are not going to do silly things or illegal things. With all due respect, that doesn't cut it. We are here debating the enactment of a law. A law needs to afford due process, a law cannot be unduly vague and a law cannot be selectively enforced and arbitrarily applied. The current version of this ordinance has all of those ornaments. It's problematic, the language is vague, there is no due process, it leaves solely within the discretion within the enforcing authority to decide when, how, where and what to do with these types of situations. I understand what the objective is, you have problem landlords out there that are habitual offenders and you want some teeth in a local by-law to fine them and also to try to avoid costly and lengthy court proceedings, I get it but the incidental casualties here are good people that are sitting in this room right now that fall victim to this. A neophyte real estate investor comes to the city and they don't come to the municipality and the inspectors looking for code books and guidance, they say hmmm...I saw a video and I'm going to buy this three-family house; we will live there and rent out the other two. A natural disaster of some sort hits or a disgruntled tenant hits, right now the way the ordinance could be applied, you may get a new inspector that is in place that's looking to really be dogged in his enforcement of the by-laws and take a different mindset and all of a sudden you have a property owner who didn't cause the damage that doesn't know the laws, having no due process and being faced with a fine and in an unreasonable time period to correct the situation. That's not what you are trying accomplish but that's what you will effectively accomplish if you adopt this law in its present incarnation. This thing needs to be overhauled and re-written. It's got significant problems. We can balance everybody's concerns, I'm not thumbing my nose up at the adoption of an ordinance; it can be done. If you put good legal minds on this working together with the competing interests you can balance all of these concerns.

Alderman Lopez

With respect to Attorney Nicosia's points, I think the current victims of the discussion that we are having are actually the tenants that are living in substandard living conditions; that's the purpose of this committee. We didn't create this on a whim or for fun, it's because we have demonstrated issues with code enforcement that our code enforcement professionals have said they need additional support to do. In the last meeting that we had, I watched the back and forth and I think that if all of the arguments that you made didn't have any rebuttal or response, it wouldn't have been a back and forth so I think the back and forth came because arguments were made and our own qualified city staff responded to those arguments and in the intermediate time we consulted with our own legal department and came up with a strategy that responds to the questions that we didn't have an answer for. I think we have been very open minded with regard to how this is going to affect landlords given that we are really talking about a hypothetical scenario. Everyone in the room agrees that our city staff are well regarded and they are doing their jobs today the way they are supposed to and everyone has a positive interaction with them so I would urge my fellow Aldermen to remember that nothing we do is ever set completely in stone, you can add amendments or submit other ordinances if you have additional concerns or something is proven not to be working but what we have proven not to be working right now are specific situations; housing conditions where we can't do our job and protect our citizens from substandard living conditions. Personally, I am in favor of either the second or third amendment but I would urge the committee to start moving forward because while we are talking about hypothetical things and offers are being made to

go back to the drawing board and scrap the legislation, people are going to bed tonight in substandard living conditions. That's what I would like to be solved as the Alderman who is lucky enough to have the largest number of substandard living condition complaints I would like to see action on this.

Alderman McGuinness

The genesis of this whole thing really comes from two properties in the city, one on Amherst Street which is the motel that was the subject of a reality show and the Temple Street rooming house has been a problem since I was 20 years old. I think this legislation starts from there and tries to solve those two problems but the legislation as it morphed became very broad and I wonder to myself that it hasn't been necessary up until these events and is it really necessary now. I don't know that it is, I don't like this legislation, and I think it's very dangerous. Why we have all of the departments now jumping in on this is kind of interesting, I point to Sarah Marchant's memorandum of February 29<sup>th</sup>, the following departments have requested to be including in the passing of such an ordinance; Building & Safety, Planning and Zoning; well of course they do, this is a wonderful opportunity for them to take some police power but that doesn't mean there is a need but just a desire of just getting on board. It not only effects landlords which really were the subject of the two problem properties, there was some testimony of some people in the public last session and one gentleman said this effects everybody, every property owner, it's not just landlords and that man was correct. I think the legislation goes way too far. I understand the attorney's suggestion that maybe it ought to be completely overhauled but I'm not sure I like it all. My concern is that there is too much room for arbitrary and capricious use. I will not support this bill in any form that it takes.

Attorney Nicosia

Once again the message that we are trying to send is that we want to help you get this right. You have the legal authority to enact some form of a fine ordinance under the statute but I wish the legislature would have gone further than what they did in enacting the RSA but they didn't. A rush to judgement and enacting a law is not the solution here as Alderman Lopez is suggesting. You have existing statutory rights to rush into court and solve life safety issues and seek monetary implications to that. You've got those bullets in the gun now so that while we are trying to get this fine system right, it's not a situation where tenants are left hanging in the lurch as has been purported by Alderman Lopez, that's not the case. The message that you are sending the property owners, despite an affirmative representation at the last meeting that you want to work with them is that we are not willing to work with you, we are not acknowledging any of your comments. We have put back in a discretionary warning provision and nothing else. These are mixed messages that you are sending the property owners. I am hopeful that we can go back to the drawing board and try to get it right so that if it passes then it doesn't mire itself into further contests. I just don't see a need to rush it in its current form.

Alderman LeBrun

Alderman McGuinness said most of what I wanted to say but I would like to ask Attorney Nicosia, you mentioned that some of the new property owners simply do not know what their responsibilities are. To me that's somewhat assuming that they don't have the wherewithal to know that when they go into owning the property and becoming a landlord that there are regulations that they are going to have to follow.

Attorney Nicosia

By no means am I trying to say that property owners are not without responsibility to become knowledgeable about the law because they are. The oneness is on them to understand their legal existence in this community but I don't want the image conveyed that as soon as an investing real estate owner comes to town that they are rushing to get all of their code books. That's not real life out there. Once again I am trying to protect those fortuitous events where by happenstance if an inspectional authority ultimately understood all of the facts that were that were in play leading to the fine that they wouldn't have issued the fine in the first place. I think a mandatory warning situation is a good litmus test for that and as a matter of fact, Nelson had made a

great suggestion, which I think should be built into a final version of this ordinance that in addition to a mandatory warning system that at the time of a mandatory warning is handed out the inspectional officer is required to hand out code compliance materials with that warning so that it is indeed educational and not punitive in its first analysis. To go right to a fine system deprives them of due process.

Mr. Bill McKinney, Manager, Building Official, City of Nashua

Alderman McGuinness, you reference police powers and our belief that we want more police powers and actually at this time police powers are already enacted to the enforcement people through state statute and what I feel by this ordinance is actually giving us the tools to be less heavy handed than what the laws require right now. I do have some prepared comments that I would like to go through.

Alderman Siegel

That would be fine it will be on the record.

Mr. McKinney

Members of the Committee,

Currently there is a proposed amendment to the City of Nashua Revised Ordinance Chapter 74 which if adopted will grant citation authority to those city agencies that work daily to administer the multitude of safety codes adopted by the city and the State of New Hampshire. This proposal helps to close a gap in the current processes that are time consuming and costly to both the city and the accused offender. The current process is that from the building safety aspect is that a verbal or written warning in most cases is provided at the inspectors discretion or if a repeat offender or with the minimally elevated hazard violation at the direction of the department manager, a citation for a class A misdemeanor is issued by the Nashua Police under the applicable state statute resulting in court with no exceptions. If the offender is found guilty then incarceration for up to one year and a fine of up to \$2,000 may be imposed by the court. In these cases, we would involve up to one code enforcement officer, one building & safety inspector, a department manager, potentially a Fire Marshall, a health officer and a law enforcement officer; not to mention the court time and cost to the accused and to the city. I strongly support the proposed amendment to Chapter 74 in its original state as I believe it to be a valuable tool that can be utilized to help educate and alter behaviors without the monetary and time cost of court. Recently, amendments were proposed mandating an additional step of warnings to the citation authority. I have reviewed the proposed amendments to the citation ordinance and have several concerns with mandating verbal and written warnings. In my opinion these amendments weaken the proposal, will make the proposed ordinance more cumbersome and may actually have a reverse effect on timely compliance if warnings are mandated in the ordinance. The Code Enforcement Department, which the landlords have the biggest connection with, already has this requirement written into its ordinances to protect landlords, however, this same requirement mandated upon the building & safety department, health department and Fire Marshall's office will result in delays of necessary enforcement actions for properties and projects beyond those owned by landlords. The ultimate goal of the proposed ordinance is to provide a step in our current process that result in an enforcement action when one is warranted but will hopefully also result in corrections being made without the time and expense of court. Wording such as "shall" mandates that a warning must be given even when a citation may be warranted based upon the severity of the incident. Examples of that are repeat offenders such as a property owner that routinely performs work without a permit, however on different properties; each one of those would be a separate violation and a warning for each would have to be issued. A contractor performing work without a permit, not to code or failing to schedule required inspections; all of these violations have the potential to affect the citizen's safety and well-being in the city. The proposed ordinance in its original state offers a far less costly and expedient process by granting a single inspector the ability to issue a citation or ticket with the intent of educating and altering behaviors so no one must go to court. The ability of an inspector or code enforcement officer to issue warnings should remain as a discretionary tool that can be used by the inspector to educate and alter behavior prior to a citation. The

warning should not be mandated as it may only prolong the time that it takes to correct the violation. I respectfully request that the committee recognize the positive impact and benefits that the unaltered amendment to article 74 provides to the agencies who administer the codes and to the safety and the citizens of Nashua. I ask you to please reject the proposed amendments to the citation authority and grant the agencies the added tool that will assist in more timely compliance and less costly enforcement actions. Respectfully submitted, William McKinney.

Alderman Clemons

So a mandatory warning provision, if it were to be added in here, what prevents the warning from being stop what you are doing immediately and that's your warning?

Mr. McKinney

We have that now and we use it on a daily basis in instances where we do encounter a contractor that's working without permits on the first time we encounter that. If he changes job locations or if we encounter him again working without permits then that's a separate violation. If it's a mandatory warning then that means I would have to give him another warning. This is a problem for us. I have no problem with giving warnings and trying to give behavioral corrections by warning but I would say after the first warning, regardless of the address that they are working at, the citation authority should be granted to us to issue that citation. Currently under state statute we have the authority to just issue the misdemeanor and we go to court and there is possible jail time and fines. I personally feel that the current law is very strict and time consuming and that's why I think the proposed citation is less heavy handed than if we follow current state law.

Alderman Clemons

The point should be education so in the situation that you just described, if you came across a gentleman that repeatedly was violating the law wouldn't you just take the state law and apply that to him and say you are obviously have been warned twice in writing in two different locations so now we are going to cite you for this and that would be added to the case that would go to the state. I would like to see a vague warning, but a warning nonetheless that would give whoever is issuing the warning the ability to say the warning is stop what you are doing, it's immediate or fix this it's immediate now because it's a fire hazard or whatever the case may be; a contamination in a restaurant and it has to be remedied right now. Or in the case of, if it's some siding on the side of a building then okay so you have two weeks to fix and then maybe the owner says well can I have three weeks and they okay you can have three weeks. It's that purpose of having the warning in there so that the person can make the correction. If they are a repeat offender then there are state laws that take care of that and I would encourage you all to skip by the ordinance and do that. There's nothing that would preclude you from doing that and it puts a protection in for somebody who just didn't understand that there was a violation. I'm not saying that any one of you would ever do that, it's about who takes over for you when you are no longer here or in the case of additional staff. I would really recommend that the committee put in a mandatory warning in some form in the legislation.

Alderman O'Brien

I have a hard time wrapping around who comes next in the future. We have a turnover in the police department annually. Let's not lose focus; it seems to be that we are trying to deal with a problem. There's a violation before us and we are trying to fix that. Nashua at one time had a lot of these homes that were owner occupied; now it's more of a landlord situation. We used to hear French spoken on our streets and now we hear Spanish or some other native tongue but Nashua is evolving and changing and we welcome the landlords and we welcome what they do and supplying adequate housing. We are dealing right now with a violation and laws stay in perpetual until they are adjusted or whatever. I think we are trying to do that here. Much of the life safety code is based upon tragedies; things that have happened. Situations like the Coconut Grove fire in the 1940's just because the doors open in and not out but if go to a store today all the doors open

out. First, to write a warning it has to be based on a legal fact and that's what we are saying here. If there is a legal fact then the warning can or cannot be issued. We are missing the point. There has to be a violation not I think there is one.

Attorney Nicosia

The police example, which Alderman O'Brien references; the police department have a set of unambiguous criminal statutes that they are obliged to follow. Their interpretation and enforcement doesn't rest necessarily with the person in terms of the vitality of the law. The law you are looking to enact tonight relies exclusively on the vitality of the person and not the letter of the law and that's a big problem. You are analyzing this from an adoption of an ordinance to get the bad guys but you have to have the simultaneous analysis as the impact on the good guys and that's what I am here to advocate for. Having done this long enough I can prognosticate that I believe an adoption of this law in its current form is going to lead to significantly more litigation that is befalling the inspectional departments now. The reason why I say that is because you provide no due process to the aggrieved parties that may be faultless when a fine is imposed because they are simply just facts that the inspectional department was unaware of at the time. The property owners then have one venue which is an appeal into court which is the very forum that you are looking to avoid. If they don't appeal into court they will be dealing with the matter of a fine. As a matter of fact, the way the fine statute is written right now they have to pay the fine regardless on an appeal or the fine continues to accumulate even during the appeal. That's part of the ambiguity that I am trying to point out. I just don't get the rush to judgment here. I understand that you want to arm the inspectional department with something to get the bad guys but you have got to re-write this thing to protect the good guys. It can be done. I thought we had a great discussion the time we were here but now I am getting the sense that you are not doing anything for the property owners, we are going to adopt the statute as written with a discretionary warning system and other than that, that's as good as it's going to get. We are willing to work with you to re-write this but what I am hearing from you is that is not an option for these property owners.

Alderman Cookson

This is the second time this evening that Attorney Nicosia has indicated that we are not willing to work with the property owners. I concur that we had a great discussion last time and at the end of that meeting my expectation was that we would take your memo and send it off to our legal counsel to review and propose some amendment to the legislation as we had originally received it. What happened between the end of the last meeting and the beginning of this meeting with the exception of receiving an amended piece of legislation, I don't know. I assume at some point in time legal engaged Director Marchant and her staff but this group of Aldermen, or I will speak for myself, I did not have any interaction with legal counsel between the end of the last meeting and the beginning of this meeting. I would be interested in hearing what sort of dialogue took place.

Chairman Siegel

Let me address Alderman Cookson's comments. There was a meeting held with Director Marchant, myself as not only committee chairman but as the primary sponsor of the legislation, Steve Bolton, Corporation Counsel and Attorney Celia Leonard. This was after the legal department had a chance to review the information and gone over what the suggestions were including the notion of an Appeals Board. The discussion revolved around what types of things were in there right now and what changes made sense to be made. I would urge you to understand that this idea that somehow this is just window dressing and we didn't listen to you; I take exception to that because that's not the case. The reason certain things are not in there that you may want in there is because the legal department felt there were problems associated with its actual implementation. I know the Alderman Clemons alluded to that with regard to the Appeals Board. For example, while the conversation around this horseshoe at that time may have suggested that was something that was going to appear, again, when you sit down and analyzes it and is it feasible, the sense in that particular thing was that it was not particularly something we could do. With regard to the warning system, whether or not to make that

mandatory versus putting the customary warning that we have now that isn't documented anywhere by the way, we decided to put that back in because that made sense, we felt there was a legitimate concern addressing your point about future generations of employees, that this would be something worth putting in. I also want to point out that this ordinance covers not just landlord/tenant issues but it's fire and restaurants so this is broad spectrum so the idea of mandatory warnings is very different in different contexts. If somebody has a refrigerator and it's temped at 50 degrees and they are having perishable goods stored there overnight, we are not going to give them a 10-day warning to correct that problem because somebody is going to die and I think that everybody can appreciate that, it's common sense. The problem is that the ordinance, by covering everything, there has to be the discretion in there and that was part of the discussion that we had also. With regard to an Appeals Board process, let's step back and look at where we are at right now. There's a lot of reaction to this ordinance as though we are visiting a new set of things that never existed before as though everybody were operating with complete discretion and we didn't really have anything that was an enforcement process which clearly is not the case. We had everything already before, it's just that if there was a violation, and by the way, we didn't document how we did the warnings, and over time if there was a consistent violation then the first step was to go to court. Again, getting to Mr. McKinney's point, that's immediately expensive because I suspect that most property owners; first of all, are unaffected because most landlords in the city are not having these types of interactions with code enforcement because they are generally pretty good about their properties so this idea that this legislation shows up and all of a sudden drops a bomb on the little guy I take issue with because the little guy right now has it worse in the sense that we have no specific guidelines, it's discretionary right now so future generations can adhere to whatever standard they feel like, we have no standard it's just that our department is very well run and that over time those values are passed on. This ordinance really just codifies something that is discretionary now. Your first step right now is to end up in court so if you view this idea that we get an administration that becomes somewhat harpy like and wishes to inflict pain on one or more individuals in a malicious fashion; that's something you could be concerned about. I don't trust government 100%, I understand that concept but right now step one is to go to court and since you are probably a corporation you are not going pro se, you have to hire an attorney and that step is hugely expensive. Right now we are in a position where that's not the first step, there's a step before that and actually this ordinance identifies a warning mechanism which admittedly is discretionary but it's no different than it is now. It gives ample opportunity for reasonable correction of violations. Before we even get to the point where there is a citation there has to be a willful disregard for an existing regulation. It is arbitrary, the blue book regulations exists. We don't expect all property owners to say oh I better get to City Hall and gather all types of information and read about it. There's always "gotcha's" everyone. When you come right down to it, the codes are codified common sense. There's not a lot in there that you would say wow, that's weird, why would I do that? You mean I can't hook up my own gas line? Most people would know that you can't do that and to the extent that there are violations where there is some ignorance, I think it's been clear that code enforcement is very reasonable. As far as the 10-day limit we discussed that, right now it's discretionary and it's based on the common sense notion that certain things require more time to repair. If you are repairing a roof it's not going to get done in 10 days so everything becomes what is the good faith attempt that is happening. Right now that's informal so there is no change, there is no big hammer that came down and said wait, there's this ordinance; it's good faith right now. I would suspect that most of the people in this room have little contact with code enforcement. This is a tool that deals with willful violators. With regard to an Appeals Board process, right now if you think about it, if you have a problem with code enforcement and you want to talk to a supervisor that in a way is an appeal. The people that would be on this Board would have to have some expertise to make a valued judgement on whether or not something was legitimate so they'd be in the same departments anyway. Effectively you would be doing the same thing so beyond that you definitely have due process and I take issue with that. That's the court system and that's step one right now, your due process right now starts with the very thing that everyone wants to avoid. This is a step before that and add to that, you can always speak with a supervisor. This ordinance codifies something which isn't codified already which is a reasonableness and warning element. The difficulty that I know you have is that it isn't mandatory but I think there have been very good reasons why. Law enforcement agents, while they go by a very specific set of statutes, they absolutely have discretion. If you are pulled over and the officer thinks that you are speeding, you don't automatically get a speeding ticket just because you were caught on radar going over the speed limit; very often they use their discretion. I don't

see this any different.

Attorney Nicosia

I appreciate those comments and I view them as advocacy for the current language of the by-law. There is nothing that you have stated that changes my view on the facts on the law in terms of what the impact and the flaws of the statute currently. You are viewing this through the prism of your belief on how enforcement might take place with the current staff. Enacting a law has to be beyond that and it can't be people specific as much as you may want it to be. Your most significant gripe with the current system is that step #1, the municipality has to go to court. If you impose this by-law then step #1 for due process for the property owner is that they have to go to court. There is zero due process. This is a fine penalty statute without redress other than the court system. This is a substantive due process violation all day long on that issue. We have irreconcilable views on the language in the statute currently and how those would be applied. I respect and acknowledge all of the reasons why you want to adopt this statute and why the inspectional department wants to use it. I also believe that all of the concerns of the property owners are also legitimate. The most significant issue that I have here is the rush to judgement that is taking place because I believe that this can be re-written to address and balance everybody's concerns. Good legislation is brought about through good and deliberate drafting. You put some lawyers and representatives from each party on this and it can be done. We, effectively, as an interested group here, other than advocating for our position at the last hearing, we were not part and parcel to any of your dialogue because everything you have critiqued I believe can be remedied with the appropriate drafting if we were afforded the opportunity to move in that direction. Again, I want to state for the record that these property owners want to work with you in trying to draft a proposed ordinance that balances everybody's concerns. You have come back here with the same exact thing that was here before and nothing more. That's my view and I think it's legally problematic.

Alderman Lopez

I feel like a lot of debate and negotiation has taken place regardless of which proposed amendment was the newest. I think points were made in this meeting that were echoed in the previous meeting as well that still seem to not quite stick so comments like if you think you are being discriminated against by a person that doesn't exist but might someday exist and might be treating people unfairly then you can go to that person's supervisor and that's something was stated and clarified here. It is an appeals process, it is a resolution. I think as long as the conversation is focused conveniently on whether we need to do this or there is any kind of urgency, that's all we are going to be talking about but based on the comments that were said here this has been going on for a long time with the most visible offenders; since some of us were 20. My question for the Board is, is that okay? Is that how you want the character of Nashua to be? Is that an acceptable way of life or is this something that we should be addressing as responsible legislators? I understand the effort involved in crafting an ordinance and I think I am the least experienced on the Board so I may approach the purpose of an ordinance differently but I'm not sure that education as the purpose of a law, I think that the law is meant for intervention and if education is to take place then it would take place at a department level and I believe that was discussed as already being available and taking place. I've heard from our staff that they are trying to maintain the ability to have those positive relationships so I think the ordinance as presented is meant to address an issue that needs to be addressed. It's meant to handle substandard living conditions that do exist. I would urge the Board to consider action steps and not more evaluations. It's our job as legislators to do something to make the city better when constituents come to us with concerns. While the constituents in this room are mostly landlords, we also had a lot of constituents who are tenants and there was a lot of public input when we asked people about substandard living conditions last year. I think we should be weighing both needs and I think if we are weighing both needs fairly; one argument is that something might possibly happen in a hypothetical manner and the other argument is that something is happening right now that we should be intervening.

Alderman Clemons

With all due respect to Alderman Lopez, I actually agree with you in that I do understand and know that there are significant issues, particularly with the property on Temple Street. Where I stand on this legislation is that in all reality when you are looking at the willful, neglectful landlord who just refuses or continually has problems and the police department is always there, when I look at this legislation I don't see it having any effect in changing that. All it's going to do is add fines onto what is already going on, so they will owe us \$1,000 on top of hopefully being able to fix the problem via the court system. My judgement on this falls to the staff and this is something that the staff wants and they think it's an important tool so I want to be supportive of them. Even though I don't think it's going to change anything. Knowing that, we have to put in precautions of what it might do in the future to someone else. That is why I advocate for a warning provision. Attorney Nicosia mentions the appeal process but in all reality the appeals process is going to be court anyway. If we give someone a chance to fix the problem in the form of a warning then that is where you give the discretion to the staff. What you say is you have this amount of time to fix it and if this person doesn't fix it then you start to fine them. My point is once it gets to the point of fining somebody they had no intention of fixing the problem anyway and you are going to end up in court regardless; that's the way that it is now. You have to have in the ordinance a warning provision because the ultimate goal should be not to fine somebody but to get the problem fixed so by adding a warning provision you are allowing that process to happen in a way that doesn't make it punitive to the person who may not have understood what law they were violating.

Alderman Lopez

I agree 100% with the purpose of getting the problem solved. I might be more on the interventionist side because I would have imagined anyone with any basic education knowing that they have to fix something but with regard to how this legislation would impact specific substandard living conditions, can we ask the staff to answer that point. What would be the effect of passing this ordinance to your ability to address problem landlords?

Mr. Ortega

If we are talking about a life safety issue then it doesn't affect us at all, you fix it immediately. No smoke detectors, sewage waste, collapsed ceilings or no utilities, that is immediately or we shut the unit or building down. General maintenance issues like a big piece of siding is missing from your building and it would have to be a big piece for us to say you have to change it. Then we say how long do you need and try to work with them. When most of the code enforcement officers give warnings they document it the system when they met with the landlord and what the outcome of the meeting was. It will indicate how many days they have to fix it.

Alderman Lopez

Just to clarify when being asked if this would do anything to make a court appearance less likely, your answer is no we already have everything we need to do that. I'm asking if this would get the problem solved that you are trying to solve. Instead of a landlord debating whether it needs to be solved and then going to court over it.

Mr. Ortega

Yes, it would. Some of the cases that we have taken to court have been in our system for two years. When it gets to the point of giving a citation, if we issue it it's because the landlord just didn't comply.

Alderman Lopez

So in a situation where a landlord is compliant this ordinance makes no difference to you whatsoever?

Mr. Ortega

If the landlord is compliant then there is no issue.

Chairman Siegel

I'm going to ask Mr. McKinney if perhaps you can address this a little bit more.

Mr. McKinney

From a building safety aspect, the ordinance for us is two-fold. One, we hope we can use it as a tool to alter behaviors at a less expensive and time consuming thing for the offender and the city by issuing a citation. It also helps us when and if we have to go to court; it also gives us a trail that is already built that we can explain to the judge at the time. It helps us get a finding from the court much faster because we have that trail. If we go to court there are a lot of negotiations that goes back and forth and we are actually made to go back and do the steps that we are asking in this ordinance that does already which is to create that trail and show that we have attempted to work with the landlords. This shows a true process that is done and we have given minimal fines towards the person to encourage correcting the issue and at least now we have the true trail that the judge can look at.

Alderman Clemons

Like I had said, this is a tool to help for court, is that correct?

Ms. Marchant

It's a tool that is hopeful to deter court or ensure compliance in a faster mechanism but it is also a tool that will serve us well if we get to court because it's not going to fix every situation. If it reduces the number of times that we go to court by one then it will save us a tremendous amount of manpower, hours and time. Many of the repeat offenders know exactly how the system works so by the time we get to court they know that they have another 60 days until the hearing is scheduled. They will fix the problem right before court and the case is dropped at the very last minute so that gives them 6 months to fix something and then we start the process again. This ordinance allows us to give someone a ticket which may encourage different behavior because they will be held accountable faster. It's a small fine that can escalate but we are hopeful that it will alter behavior before we have to stand in front of a judge.

Alderman Clemons

That's essentially how I understood this ordinance so when we talk about the major violators in the city and we all know who they are; again, I don't think that this ordinance is going to help those situations. When we talk about the most egregious people that go to sleep tonight, whether we pass this or not, they are still going to be in the same situation. It could help with someone who is an unknown to the city or somebody that is but may be is afraid of a fine. It should come with a warning.

Ms. Peek, Manager, Environmental Health, City of Nashua

We are not a direct fit when it comes to the landlords but what we had wanted to accomplish with food service owners and manager was a mid-step. We already with licensed facilities, we have a relationship and a system that makes up a series of warnings. I wanted to address willful non-compliance because the next step is license suspension and the next one is license revocation. We have appeals processes for both of those steps and anyone can talk to me at any time or my boss or my bosses' boss who is the Mayor. The only exception to that is something that I am very passionate about and that's an unlicensed food service operator like a rogue canteen truck which puts the public at great risk and I don't think that they deserve a warning.

because they know; it's like driving a car without a license. My last point would be that one of the things that we keep coming up against is discretion and it is the hardest thing to teach new people coming on but it is our mission to treat people fairly. The violation needs to be in line with what they have done.

Mr. Adam Pouliet, Fire Marshall, City of Nashua

There is a lot of emphasis on landlords and property owners. Most of the issues that I deal with are places of assembly such as bars and restaurants. Typically those are our large loss of life fires. This ordinance would help me greatly in dealing with some of those issues. For example, the commercial kitchens, the cooking creates grease laden vapors and the grease builds up inside the hood and duct system. There are codes that require frequency of cleaning and maintenance of the fire suppression systems and the hoods. These get inspected annually if not twice per year. I will go in to do an inspection and they know I'm coming and their hood is two months behind schedule for cleaning. I tell them you have to get it cleaned and I go back a week later and they say yeah, I called the cleaning company but they are booked two weeks out. You go back in two weeks and it's still not done. They manipulate the system. These problem places put profit before safety. Maintenance of the hoods and fire suppression systems cost money and it's not something they can physically see so they don't see a value in it. By the time I finally get compliance they have been able to go a session without having to clean it and they save themselves \$600. This would help me in that they would get a ticket and have to pay a fine and they would still have to do what is required. I hear tonight that we are looking for police powers and that we are looking to punish people. No, we are trying to get compliance and meet the minimum standard and these tickets will be directed towards our willful violators.

Alderman Lopez

You gave an example where a company said that a company would get their system cleaned out by this company and that company was booked and then just didn't come. Is the business held to using that company or could they shop around?

Chairman Siegel

The idea that you can't get your hood cleaned in a timely fashion is nonsense and there are a lot of companies that do it. Every city I've ever dealt with would give you 24 hours and then the door would be chained because it's a life safety issue.

Alderman Lopez

I wanted to clarify that indicating a plan for addressing a problem doesn't mean that's the only plan that could work; whatever the violation, the property owner could try to keep on solving the problem instead of waiting until the inspectional department comes back again.

Alderman Clemons

All of these examples have come with warnings. We've got some really good examples of why this should be passed as another layer. We should add that as a provision; a mandatory warning.

Chairman Siegel

I believe that the mandatory warning provision has already been shown to be problematic in very concrete ways. Mr. McKinney gave a perfect example of a contractor who by very nature is going to be moving from job to job where the warning has no meaning whatsoever. There is literally an institutionalized non-compliance which becomes acceptable and this is where discretion is very helpful and the mandatory warnings where it's not warranted I think is a problem and we've had other examples of that. Again, nobody has complained about how the system works now and all of it right now is discretionary. We have nothing in place

right now, it's completely discretionary. This idea that there is no due process, well there is actually more due process in this codified now than there would be in the existing if the notion that due process is avoiding court. Step one is court so again for those that feel the world is going to visit them in a malicious way, well then they are in court on step one and that's a problem and a high expense because they are not going to go pro se. Attorney Nicosia said well you Aldermen deal with things at 30,000 foot level and don't examine that. Well, maybe some do but I can assure you that this wasn't dealt with at the 30,000 foot level. A lot of thought was put into all of the objections. Just because they were made doesn't mean they were automatically incorporated in here. This idea of work with us so we can change this around, I think that fundamentally some of the things that you want to have happen, and I understand why you would want to advocate for them potentially, and I may not agree with you, but your job is not to agree with me or vice versa, it's to come to some best conclusion. Just because those objections were made doesn't mean that they ultimately end up in the legislation. We really feel that we rejected those for good reason. Again, there was some feeling that this appeals process might be a good idea and upon further examination it was felt that it wasn't. Those were the two things that came out of that meeting I might add; it was putting the warning in and some notion of appeals. I believe that in the minutes of the meeting I specifically asked, I said this is what it looks like we have. I believe there was due diligence although you may not agree. You are starting from a position where there is nothing but discretion and the existing laws which are there and can be fined and we have to go to court to enforce them. Somehow in this environment where we have nothing codified, the world has not ended through years and years. It's been much more difficult for the city to enforce problem and willful violators and I don't believe you are representing problem and willful violators because I certainly know who they are and they are not sitting in the audience. You've described scenarios of what may or may not happen and they are not happening now in an environment where they are more likely to happen in my mind. I can't agree with your points that there should be a reworking and getting together and somehow this is a disastrous piece of legislation. I don't necessarily agree with that, I think we have made changes, we certainly didn't ignore you. We didn't come in with a carnation and say well we heard what you said and we came back and it's exactly the same and now we are just going to discuss it again. There were things that were changed.

Attorney Nicosia

It's very obvious to me that it's a fete de compli where if the chairman wants this vote to go so I will leave you with these parting comments. My arguments are documented as part of the administrative record; I am not going to continue to rehash those because everyone can read them. At the last meeting you asked for some of the big ticket items in closing and I reference those. There are many flaws. The current drafting of this ordinance is legally flawed and it will be legally problematic in its application, it's potential for abuse, it's going to have incidental negative effects which you are not fully contemplating right now. It's got big problems and there is a willingness to try to work through those issues because I think that everybody has noble intentions here and you have great workers but laws are not enacted based upon people, laws are enacted based upon potential situations and they need to be addressed in an unambiguous fashion and that's not being done here. I whole heartedly disagree with you. You came back with the exact same legislation with the exception of a discretionary warning provision which has no practical impact at all because as you openly acknowledge, that's the current practice anyways so therefore you have come back with the exact same thing and you have acknowledged none of the constructive, legitimate concerns of these property owners and you've gone beyond that to say that there is an abject on willingness to consider a redraft in a cooperative environment. All of those things are legally problematic so it sounds to me that this Board should just move the question at this point and place it to a vote. We will continue to advocate at the full Board of Aldermen and beyond until such time as the ordinance will be drafted that balances everyone's concerns and affords due process.

Chairman Siegel

May I just say that you have your viewpoint and we vehemently disagree, you are an attorney with your point of view and viewing this as legally problematic but remember that from our point of view this was dealt with by a legal staff which doesn't believe that it is legally problematic? If it was legally problematic it would have never have gotten to the point where it was legislation at all. I guess that's why we have chocolate and vanilla.

Attorney Nicosia

That's right and that's why we have other forums for other people to make decisions on these types of things.

Chairman Siegel

You are free to pursue those forums if you so desire.

Alderman Clemons

You had stated that right now it's discretionary and what this does is basically keep it discretionary. The only thing that I will say is that although that is true, we are adding a level where we are fining...there is the potential of fining people and it's because of that that I advocate having a warning. It's not that I don't think that if by some chance this doesn't pass that I want to go back to the ordinance and put in a mandatory warning provision, I don't want to do that because as it is right now there is no fine, it's basically you either fix the problem or we go to court. This is you fix the problem or you get a fine and if you don't pay the fine then you go to court. There's a difference in there and the difference may seem slight but it's not because it's a real penalty and \$1,000 can make or break somebody and that's why I like to ear on the side of caution.

Chairman Siegel

Let me address that. First of all, the idea of \$1,000; to get to that threshold there is no typical violation where you are getting to that point, particularly a landlord. You've really got to get going on a willful violation. As far as, you alluded to other forums to address this, clearly I assume you will advocate before the full Board of Aldermen as whatever this committee does is clearly just a recommendation. We don't know what the vote is. Your statement that it is a fete de compli because the chairman is arguing a certain way is not the case. I've been a member of a committee and I've argued a certain way and the committee says no. It just depends on how people vote, it could turn out against me and you could walk away entirely happy. It still goes to the full Board of Aldermen with a negative recommendation but you can argue again there. With regard to other forums for redress in your view beyond the Board of Aldermen, I assume you mean the court system and I would say that that's an interesting form of redress given that for most part we are talking about willful violations getting a first offense of \$50.00 and you have to work pretty hard to get to that point even and if I looked at the amount of money that one might spend taking something to court, that's a lot of \$50.00. You are welcome to say that's the case but I would urge the people who are actually against this in the audience probably haven't ever paid a fine so who is it that's actually getting helped if this is not adopted or taken to court? It's the people who are the most egregious and willful violator's that aren't even out here. Everyone is free to make up their own mind but I would encourage people who are in good standing to carefully ponder to what extent they are actually going to aid and abet the people who are the willful violators that are going to be most affected by this; their decision. Are there any other comments? There were none.

We have before us a recommendation for final passage O-16-003 as amended.

## **MOTION CARRIED**

Alderman Cookson

I didn't follow-up with legal but one of the ideas that came out of public comment at the last meeting was the idea of withholding payment to a willful violator.

Chairman Siegel

We have not gotten any information on that.

Alderman Cookson

We agreed to ask for another opinion with this counsel.

Chairman Siegel

We did and we have not gotten that but I will follow-up on that.

Alderman Lopez

I'd like raise a point of order; we never formally accepted Alderman Clemon's communication.

Chairman Siegel

There was no member of the committee that made a motion to accept that as a communication. The idea was that the second amended version was going to be debated and there wasn't any motion made by any committee member to modify that legislation and given that was the case in discussion there have been no changes made.

Alderman Lopez

I understood that but I just wanted to remind anybody who is on the committee that they could make a motion because they couldn't when you already had another motion underway.

Chairman Siegel

Right and again, as I stated, the idea was during the discussion any member of the committee was free to make a motion to amend based on the discussion and the information that was presented.

Alderman Lopez

I guess I didn't understand that.

Chairman Siegel

It was explicitly discussed that we could put something on file but we were not making a motion for final passage of a different piece of legislation but we could have accepted a communication.

Alderman Lopez

Okay, I understand now.

Alderman Clemons

I intend to ask President McCarthy to put this communication on the next full Board of Aldermen meeting.

Chairman Siegel

You are certainly free to do that.

DISCUSSION - None

PUBLIC COMMENT

Attorney Nicosia

I have no further comment.

Mr. Bob Dionne

I have no further comment.

Mr. Stacy Lawton, 243 Main Street, #21

I have a landlord, the Manukian's, of MWH Holdings, and I've been living there for four years now and we have experienced a number of issues; windows that are out of code, \$400 electric bills in the wintertime because the windows are inefficient, bed bugs, we are experiencing a tremendous amount of problems on that property and I have a form that I picked up just as I was coming in, it's a housing code complaint letter form. I can't tell you how many times that I have filled these out and nothing happens. I fill them out and my landlord will sit there and say oh well we've corrected it but there's never any follow-up. I have tried to pay for exterminators but the problem continues when it's throughout the entire building. I don't know how my landlord is getting away with it. My concern is the people at 243 Main Street; their health and safety is at risk and the landlords are a violator of the code and it doesn't seem like anything gets down about that. Tonight I am going to bed in substandard housing.

Mr. Bradley Whitney, 38 Fifield Street

If want to get a license to drive a tractor trailer you have to take a test, motorcycles a different test. Here we are talking about food preparation. We are here for landlords with tenants. Food preparation is a whole separate situation. You want to pass one law that takes care of food and the same penalties for the landlord and you should have a separate ordinance for restaurants. I've been burned by a lot of tenants and now I have to write laws in the leases to try to protect myself. So many tenants don't even read the lease. I've got five buildings that are empty and I'm doing everything I can to try and improve it and we've got a good tenant in building three but the point is you pass these laws and you don't know what the ramifications are going to be. One thing that's going to happen is the landlords will have to charge more rent for this ordinance because they have to be prepared for not only fines but to prevent fines so it's going to cost more money and ultimately the tenant will pay for it. There will be more apartments that are out of reach for the average person. The other thing that bothers me a lot is that you have a tenant bill of rights but you discriminate against the landlord because you don't have a landlord bill of rights. The tenants should get a list of landlord rights and tell them that they will be put in jail if they damage the property. I rented a one-bedroom apartment and then found out that there are three people living there and they didn't pay the electric bill. You are not thinking about the ramifications. Your law should be one law for everybody and I don't understand why you would bring up food or why we would have to live under the same law that you have them.

REMARKS BY THE ALDERMEN

Alderman Lopez

I just want to remind the public that the Memorial Day Parade is on Monday and it's starts at 10:30 a.m. at Holman Stadium and following the parade, the Positive Street Artists are having their second Mural and Hearts and Minds Series honoring Veteran's and it will be at noon.

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT

**MOTION BY ALDERMAN LEBRUN TO ADJOURN  
MOTION CARRIED**

The meeting was declared closed at 9:24 p.m.

Alderman-at-Large Michael B. O'Brien, Sr.  
Committee Clerk

**From:** Leonard, Celia [<mailto:LeonardC@nashuanh.gov>]  
**Sent:** Tuesday, May 17, 2016 11:57 AM  
**To:** Lovering, Susan  
**Cc:** Benjamin Clemons; Legal Department  
**Subject:** O-16-003 - Administrative Enforcement - Proposed 3rd Amendment

Hi Sue,

Attached is "Proposed Amendment 5/17/2016" to the Administrative Enforcement Ordinance for submission to the Committee.

It is the third proposed amendment. It incorporates the changes of the first amendment (dated 3/7/2016) as that amendment corrected technical errors in the table. It does not incorporate the changes of proposed amendment #2 dated 4/26/2016.

This proposed amendments adds a requirement that a warning be given prior to the issuance of a citation. The warning may be given vocally but any vocal warning must be followed up within 1 business day with a written warning confirming the vocal warning. The language does not prohibit multiple warnings, either written or vocal, prior to the issuance of a ticket.

Please let me know if you have any questions.

Thank you!

-Celia

Celia K. Leonard  
Associate Corporation Counsel  
City of Nashua  
[LeonardC@nashuanh.gov](mailto:LeonardC@nashuanh.gov)  
603-589-3245



## ORDINANCE

### ADMINISTRATIVE ENFORCEMENT OF ORDINANCES

### *CITY OF NASHUA*

*In the Year Two Thousand and Sixteen*

*The City of Nashua ordains* that Part II “General Legislation” of the Nashua Revised Ordinances as amended, is hereby further amended by adding the following new Chapter as follows:

“Chapter 74

### ADMINISTRATIVE ENFORCEMENT OF ORDINANCES

#### **§ 74-1. Warning and Citation authority.**

City departments or officials charged with the responsibility for enforcing the ordinances and codes of the city are hereby authorized to issue warnings and citations for any violation of the ordinances or codes that they are responsible for enforcing. The enforcement authority provided hereby is provided for in RSA 31:39-c and is in addition to the authority for ordinance and code enforcement that currently exists. A warning as defined in § 74-2B shall be given prior to the issuance of a citation pursuant to this chapter.

#### **§ 74-2. Warning and Citation defined.**

A. A citation is a written and/or printed notice describing a specific violation of a city ordinance or code which is served on the person responsible for the violation. Each day on which a violation exists or occurs is a separate offense, and a citation may be issued for each offense. A citation shall be served in the manner described in this chapter, and shall contain the following information:

- A. (1) A clear and concise description of the violation.
- B. (2) The location of the violation and the date and time on which it was observed.
- C. (3) The name and address of the person responsible for the violation.
- D. (4) The penalty for the violation as provided for in this chapter.
- E. (5) A statement or table describing the penalties for future occurrences of the same violation.

- F. (6) A statement as to whether the citation is being issued for a first, second, or subsequent offense.
- G. (7) The name and address of the office to which the payment of the penalty may be made.
- H. (8) The time period during which a reduced penalty may be paid in full satisfaction of the citation.
- I. (9) Notification that failure to pay the penalty may result in court action.
- J. (10) The signature and printed name and department of the individual issuing the citation.

B. A warning is vocal or written notice describing a specific violation of a city ordinance or code which is spoken to or served on a person responsible for the violation. Vocal warnings will be confirmed by a written warning conforming to the requirements of this section and setting forth the date of the vocal warning which written warning shall be served no later than one (1) business day after the vocal warning is given. A written warning shall be served in the manner described in this chapter, and shall contain the following information:

- (1) A clear and concise description of the violation.
- (2) The location of the violation and the date and time on which it was observed.
- (3) The name and address of the person responsible for the violation.
- (4) The date by which said violation must be remediated to avoid a citation, which date must allow for a reasonable time to accomplish the remediation.
- (5) Notification that failure to remediate the violation by the date set in the warning may result in the issuance of a citation.
- (6) The signature and printed name and department of the individual issuing the warning.

#### **§ 74-3. Service of written warning or citation.**

- A. Any written warning or citation shall be served by the official issuing it in any one of the following ways:
  - (1) In hand to the person responsible for the violation; or
  - (2) By certified, registered or U.S. Postal Service first class mail, to the last known address of the person responsible for the violation, or as listed with the NH Division of Motor Vehicles.
- B. The official serving the written warning or citation shall maintain a record of the date, time, and manner of service of the written warning or citation including the post office receipt if service was accomplished by registered or certified mail.

## § 74-4. Citation penalties.

- A. (1) The penalties for any offense relating to the following ordinances for which a citation has been issued shall be as follows:

Table 4-1

NRO	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	DESCRIPTION
§ 182-28	\$ 50.00	\$ 100.00	\$ 250.00	Exterior standards.
§ 182-29	\$ 50.00	\$ 100.00	\$ 250.00	Interior standards.
§ 182-30	\$ 50.00	\$ 100.00	\$ 250.00	Premises and accessory structure standards.
§ 182-31	\$ 50.00	\$ 100.00	\$ 250.00	Emergency and Code Enforcement Dept. Information
§ 182-32	\$ 50.00	\$ 100.00	\$ 250.00	Standards.
§ 182-33	\$ 50.00	\$ 100.00	\$ 250.00	Sanitary facilities
§ 182-34	\$ 50.00	\$ 100.00	\$ 250.00	Mechanical requirements
§ 182-35	\$ 50.00	\$ 100.00	\$ 250.00	Electrical requirements
§ 182-36	\$ 50.00	\$ 100.00	\$ 250.00	Means of Egress Standards
§ 182-37	\$ 50.00	\$ 100.00	\$ 250.00	Lodging Units
§ 182-38	\$ 50.00	\$ 100.00	\$ 250.00	Number of exitways
§ 182-39	\$ 50.00	\$ 100.00	\$ 250.00	Egress Doors
§ 182-40	\$ 50.00	\$ 100.00	\$ 250.00	Fire Escapes and Ladders
§ 182-41	\$ 50.00	\$ 100.00	\$ 250.00	Smoke detectors/alarm devices
§ 182-42	\$ 50.00	\$ 100.00	\$ 250.00	Fire Suppression systems.
§ 170-2	\$ 100.00	\$ 250.00	Court Appearance	FS License required
§ 170-5 He-P 2303.01 + .02 (a)-(g)	\$ 100.00	\$ 250.00	\$ 500.00	CV 01-Food source, condition; spoilage
§ 170-5 He-P 2304.04-22	\$ 100.00	\$ 250.00	\$ 500.00	CV 03-Food protection-PHF meets temp requirements
§ 170-5 He-P 2304.23+24	\$ 100.00	\$ 250.00	\$ 500.00	CV 04-Food protection-facilities maintain product temps
§ 170-5 He-P 2304.29-35	\$ 100.00	\$ 250.00	\$ 500.00	CV 07-Food protection-unwrapped + PHF not re-served
§ 170-5 He-P 2305.01-05	\$ 100.00	\$ 250.00	\$ 500.00	CV 11-Personnel with infections restricted
§ 170-5 He-P 2305.06-08	\$ 100.00	\$ 250.00	\$ 500.00	CV 12-Personnel-hands washed and good hygienic practices
§ 170-5 He-P 2310.03	\$ 100.00	\$ 250.00	\$ 500.00	CV 20-Food Equip. + Utensils-sanitized, etc.
§ 170-5 He-P 2311	\$ 100.00	\$ 250.00	\$ 500.00	CV 27-Water source-hot and cold
§ 170-5 He-P 2312	\$ 100.00	\$ 250.00	\$ 500.00	CV 28-Sewage and waste water disposal
§ 170-5 He-P 2313.02	\$ 100.00	\$ 250.00	\$ 500.00	CV 30-Plumbing-cross connection, backflow, etc.
§ 170-5 Plu 700 + He-P 2314.01-03	\$ 100.00	\$ 250.00	\$ 500.00	CV 31-Toilet + Hand washing Facilities
§ 170-5 He-P 2316	\$ 100.00	\$ 250.00	\$ 500.00	CV 35-Insect, Rodent Animal Control
§ 170-5 He-P 2321	\$ 100.00	\$ 250.00	\$ 500.00	CV 41-Other Operations-Toxic Items
Chap. 105 Art. II	\$ 50.00	\$ 100.00	\$ 200.00	Building Violation
Chap. 105 Art. III	\$ 50.00	\$ 100.00	\$ 200.00	Mechanical Violation
Chap. 105 Art. IV	\$ 50.00	\$ 100.00	\$ 200.00	Plumbing Violation
Chap. 105 Art. V	\$ 50.00	\$ 100.00	\$ 200.00	Electrical Violation
§ 190 -146	\$ 200.00	\$ 400.00	Court Appearance	Site Plan Violation
§ 190-135	\$ 200.00	\$ 400.00	Court Appearance	Subdivision Plan Violation

§ 190-15	\$ 100.00	\$ 200.00	Court Appearance	Zoning Use Violation
§ 190-16	\$ 100.00	\$ 200.00	Court Appearance	Zoning Dimensional Violation
Chap. 190, Art. X	\$ 100.00	\$ 200.00	Court Appearance	Sign Violation
Chap. 190, Art. XI	\$ 100.00	\$ 200.00	Court Appearance	Wetlands Violation
Chap. 190, Art. VII	\$ 100.00	\$ 200.00	Court Appearance	Flood Plain Violation
Chap. 156 Art. IV NFPA 1	\$ 200.00	\$ 400.00	Court Appearance	Exceeding occupancy capacity of the posted Place of Assembly Permit
Chap. 156 Art. IV NFPA 17A	\$ 100.00	\$ 200.00	Court Appearance	Failure to maintain kitchen hood suppression system
Chap. 156 Art. IV NFPA 96	\$ 100.00	\$ 200.00	Court Appearance	Failure to maintain cooking hood and ventilation system
Chap. 156 Art. IV NFPA 25	\$ 150.00	\$ 300.00	Court Appearance	Failure to maintain the buildings water based fire protection system
Chap. 156 Art. IV NFPA 72	\$ 150.00	\$ 300.00	Court Appearance	Failure to maintain the buildings fire alarm system

- (2) If any penalty set forth in Table 4-1 is not paid within ten days of the date the citation was issued, the penalty shall be the amount set forth in Table 4-1 of this subsection plus \$50 up to a maximum of \$1,000.

B. The penalties for any other offense for which a citation has been issued shall be as follows:

- (1) First offense - \$50 if paid within ten days; \$100 thereafter.
- (2) Second offense - \$100 if paid within ten days; \$150 thereafter.
- (3) Subsequent offense - \$200 if paid within ten days; \$250 thereafter.

C. Second and subsequent offenses are offenses that occur within twelve months of the first offense.

#### § 74-5. Penalty.

Whenever any person fails to pay any penalty imposed pursuant to a citation issued under the authority granted by this chapter, § 1-12, or § 1-13, such person shall be guilty of a violation and shall, upon conviction, be punished by a fine not to exceed the maximum allowed by RSA 47:17 or other applicable law for each offense. Each citation penalty, which is not paid, shall constitute a separate offense. If the administrative enforcement system established in the Code is unsuccessful at resolving alleged violations, a summons may be issued as otherwise provided by law, including use of the procedure for plea by mail set forth in RSA 31:39-d.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

*It is further ordained* that the Nashua Revised Ordinances as amended, is hereby further amended as follows:

1. In Part II "General Legislation", Chapter 182 "Housing Standards", Article IV "Enforcement", "Section 23, "Contents, service of notice of violation," by deleting the struck through language as follows:
  - A. Whenever the Housing Inspector determines that there has been or is a violation, or that there are reasonable grounds to believe that there has been or is a violation of any provision of this chapter, he shall give notice of such violation or alleged violation to the person or persons responsible therefor. Such notice shall:

- (1) Be in writing;
- (2) Include a description of the real estate sufficient for identification;
- (3) Specify the violation which exists and the remedial action required;
- (4) Allow a reasonable time for the performance of any act it requires.

B. Notices of violation, complaints, or orders shall be deemed to be properly served upon the person responsible for an alleged violation if a copy thereof is delivered to him personally, or left at his usual place of abode or business with a person of suitable age and discretion who shall be informed of the contents thereof, or sent by first-class mail to his last known address, or posted in a conspicuous place on or about the premises affected, or served, delivered or published in any other way reasonably calculated to provide actual notice.

~~B. Notice of violation under this section includes warnings and citations issued pursuant to § 182-24 of this chapter.~~

2. In Part II "General Legislation", Chapter 182 "Housing Standards", Article IV "Enforcement", "Section 24, "Warnings and citations," by deleting the section in its entirety.

~~A. Generally. The head of the Code Enforcement Department and his designee may issue warnings or citations to any person, natural or otherwise, including but not limited to any owner, landlord, agent, tenant, lessee or sublessee, who shall violate a provision of this chapter or permit, allow or suffer any violation of this chapter, or who fails to comply with an order or orders issued in accordance with the provisions of this chapter. Such warnings or citations may be employed as either substitution for or preliminary to and without limitation to other remedies available to the City. Such warnings and citations shall be in accordance with the procedures established by the head of the Code Enforcement Department.~~

~~B. Action on warnings. Warnings shall be written upon standard forms authorized by the head of the Code Enforcement Department. Warnings shall specify the reason for the warning and shall direct abatement of such condition which caused the issuance of such warnings within a reasonable and certain period of time. Where warnings elicit compliance as directed, the Code Official may cause such warnings to be filed without further action.~~

~~C. Action on citations. Citations shall be written upon standard forms authorized by the head of the Code Enforcement Department. Citations shall specify the reason for the citation and shall direct abatement of such conditions which cause the issuance of such citations within a reasonable and certain period of time. Where citations elicit compliance as directed, the Code Official may cause such citations to be filed without further action after applicable fees, as provided by this chapter, have been paid.~~

~~D. Fees for citations.~~

~~(1) The following fees for citations are generally intended to defray administrative costs incurred by the City in obtaining abatement of conditions which cause the issuance of such citations:~~

~~(a) For each citation issued and one reinspection to subject property: \$15.~~

~~(b) For each additional reinspection or attempted reinspection: \$25.~~

~~(2) Payment of fees provided herein shall be deemed to be an administrative fee, freely paid without future recovery or other action against the City, its official, employees or agents.~~

3. In Part II "General Legislation", Chapter 182 "Housing Standards", Article IV "Enforcement", "Section 26, "Violations and penalties," by deleting the struck-through language and adding the new underlined language as follows:

Any person who shall violate any provision of this chapter shall, upon conviction thereof, be punished as provided in § 1-12 of the City Code ~~subject to a fine of not less than \$25 nor more than \$100 at the discretion of the court.~~ Every day a violation continues after due notice has been served in accordance with the terms and provisions of this chapter shall be deemed a separate offense.

This legislation shall take effect following its passage.